U.S. Department of Justice

Immigration and Naturalization Service

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 09 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The center director granted a motion to reopen the proceeding and affirmed the denial of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a congregation of two affiliated churches. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a "youth director" at a salary of $23,145.

The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary had had at least two years of continuous experience in a religious occupation during the period immediately preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a written brief asserting that the beneficiary had the requisite two years of experience.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional

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> work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is described as two affiliated churches that are members of the United Methodist Church denomination. The churches declared congregations of 90 and 104 members, respectively. The beneficiary is described as a native and citizen of South Africa who was last admitted to the United States on June 4, 1999, as an R-1 nonimmigrant religious worker authorized for employment with the petitioner through January 30, 2001. His current immigration status is unknown.

The record has been reviewed *de novo*. In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

At issue in this proceeding is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 12, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 12, 1998.

The director noted the petitioner's claim that the beneficiary was employed by the petitioner in a religious occupation from March 13, 1998 to May 24, 1999, and since June 4, 1999. In the decision of December 30, 2000, the director denied the petition noting that the record did not show that the beneficiary had the requisite ordination as a "local pastor" until July 1, 2000, and therefore could not have accrued the requisite experience as a "youth pastor."

On appeal, counsel argued, in part, that the director did not previously raise the issue of "youth pastor" and the petitioner was not given an opportunity to properly respond to any concerns.

In order to satisfy the two-year prior experience requirement, a petitioner must provide a compressive description of the beneficiary's employment history during the requisite period. 8 C.F.R. 204.5(m)(3)(iii)(A). This must be accompanied by relevant corroborating evidence as requested by the director. 8 C.F.R.

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204.5(m)(3)(iv).

The record contains the following pertinent evidence:

1) A copy of the beneficiary's Form I-94 reflecting admission on June 4, 1999.

2) A copy of the beneficiary's diploma for a Bachelor of Theology degree from the University of South Africa dated May 24, 1999.

3) A copy of the beneficiary's transcripts from the University of South Africa showing "date of last credit is 1998-11-10." The transcript reflects his last class was "marriage guidance and counselling" in November 1998.

In response to the written request of the director for evidence of the beneficiary's employment history:

4) A statement from counsel that the beneficiary was granted R-1 classification in January 1998 and was first admitted on May 13, 1998, authorized for employment with the petitioner.

5) Copies of W-2 Wage and Tax Statements issued by the petitioner indicating wages earned by the beneficiary in 1998 and 1999.

Despite the elementary requirements of this provision, and the exhaustive procedures by the center director to solicit additional documentation, it must be concluded that the petitioner has failed to establish that the prior experience requirement was satisfied.

First, the petitioner did not provide a compressive description of the beneficiary's employment history during the two-year period. In the job-offer letter dated March 27, 2000, the petitioner merely stated that the beneficiary has "several years" of experience. Absent a detailed description of the beneficiary's employment history, specifying the dates and locations of employment, the Service has no means to determine if the claimed experience is qualifying.

Second, the petitioner failed to submit any evidence of the beneficiary's claimed admission on May 13, 1998. Although partial photocopies of the beneficiary's passport were submitted, the relevant "admission stamp" relating to the alleged May 13, 1998 admission was not included. Nor did the petitioner submit a copy of the "approval notice" of the R-1 visa petition that was allegedly granted in January 1998. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of

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Ramirez-Sanchez, 17 I&N Dec. 503 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, the W-2 forms are considered as supporting evidence, but are insufficient to satisfy the petitioner's burden of proof. Those forms are prepared by an employer and there is no evidence that they were properly issued or filed with the Internal Revenue Service. In addition, the claim that the beneficiary was continuously employed in the United States since May 1998 appears to contradict the evidence that he completed a college course in South Africa in November 1998 and graduated in May 1999. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

After careful review of the record, it must be concluded that the date of ordination of the beneficiary as a "local pastor" by the individual church is not dispositive. There is no indication that this honorific accords the beneficiary the status of an ordained minister of the denomination as defined at 8 C.F.R. 204.5(m)(2). However, for the reasons noted above, the record is insufficient to establish that the beneficiary was continuously carrying on a religious occupation for the two years preceding the filing of the petition. It is noted that, contrary to counsel's statement on appeal, attendance at a Bible college by a lay person does not constitute engagement in a religious occupation and the alien does not accrue experience in a religious occupation by virtue of those studies. See Matter of Z-, 5 I&N Dec. 700 (Comm. 1954). Accordingly, it must be concluded that the petitioner has failed to overcome the grounds for denial of the visa petition.

It is noted that the record is inconsistent regarding the nature of the proposed position. The petitioner has used the terms youth pastor, local pastor, and youth director interchangeably. The petitioner must reveal whether the proposed position is that of a minister, professional worker, or other lay worker as defined at 8 C.F.R. 204.5(m)(2). The petitioner must also provide a description of the duties of the position that includes the specific programs for youth the small church(es) operate in which the beneficiary is being offered permanent full-time employment. The petitioner must satisfy its burden of proof so that the Service may reasonably conclude that the petitioner has both the ability and the intent to employ the beneficiary in the manner stated. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966).

The petitioner is free to file a new petition, accompanied by the appropriate evidence, without prejudice.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.